



HONORABLE CHRIS VAN HOLLEN
CHAIRMAN

MUR #

6164

January 27, 2008

**BEFORE THE
FEDERAL ELECTION COMMISSION**

Brian L. Wolff
Executive Director
Democratic Congressional Campaign Committee
430 South Capitol Street, SE
Washington, DC 20005

Complainant,

v.

Mike Sodrel
702 North Shore Dr.
Jeffersonville, IN 47130-3104

Citizens for Truth
P.O. Box 1427
Bloomington, IN 47402

Economic Freedom Fund
455 Capitol Mall, Ste. 801
Sacramento, CA 95814

Respondent.

COMPLAINT

Complainant files this complaint under 2 U.S.C. § 437g(a)(1) against Mike Sodrel, Citizens for Truth, and the Economic Freedom Fund ("EFF") ("Respondents") for multiple violations of the Federal Election Campaign Act, as described below.

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A. FACTS

Mike Sodrel is a former Congressman from Indiana's Ninth Congressional District. The seat is currently held by Congressman Baron Hill. Hill and Sodrel have been frequent political opponents. Congressman Hill was first elected to the Congress in 1998. Sodrel challenged Hill, unsuccessfully, in 2002. In 2004, Sodrel defeated Hill and, in 2006, Hill reclaimed the seat. Hill defeated Sodrel yet again in the 2008 general election.

Citizens for Truth is a 527 organization that was founded in 2004 by Bud Bernitt. Its website can be viewed at <http://www.citizensfortruth.com/>. Bernitt currently serves as president of the group. On information and belief, Complainant alleges that Citizens for Truth is controlled more or less exclusively by Bud Bernitt, and is used by Bud Bernitt as a vehicle through which he can attack Congressman Hill.

Since its inception, all of Citizens for Truth's activities have been aimed at attacking Hill. Its website brags that, in 2004, it released "hundreds" of ads attacking Hill, and sponsored 38 billboards. See <http://www.citizensfortruth.com/whereisbaron/>. It also aired radio advertisements and sponsored billboards attacking Hill during the 2006. The sample ad available on its website, "Dodger," attacked Hill's fitness to hold office, alleging that Hill supports a "sneaky liberal agenda" and attacking Hill for trying to hide his record from the public. On information and belief, Complainant alleges that Citizens for Truth spent more than \$10,000 airing radio ads attacking Hill in both 2004 and 2006. Citizens for Truth is not registered with the FEC, and has not reported making any independent expenditures or electioneering communications in connection with the 2004 or 2006 elections.

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The Economic Freedom Fund ("EFF") is also a 527 organization. In the 2006 election, EFF sponsored communications, including automated phone calls (so-called "robocalls"), that attacked Hill.

After the 2006 election, litigation ensued between Sodrel and Hill regarding charges made during the campaign. Phone records produced during discovery show that, between September 1 and November 6, 2006, Bud Bernitt placed and received dozens of phone calls to Sodrel's official staff, campaign operatives, and EFF, including:

- 12 calls to Chris Crabtree, Sodrel's Bloomington office director and Chief of Staff, mostly during business hours;
- 15 calls from Crabtree to Bernitt (made on Crabtree's home and cellular phone);
- 41 calls to Noah Sodrel, Mike Sodrel's son, who has had a prominent role in Sodrel's campaigns;
- 9 calls from Noah Sodrel to Bernitt;
- 5 calls to Wayne Warf, former Official Counsel to Congressman Sodrel. Warf went off of the Congressional payroll on 7/31/06. On information and belief, Complainant alleges that Warf left the Congressional payroll to participate in Sodrel's campaign;
- 6 phone calls from Warf to Bernitt;
- 2 calls to Sodrel Truck Lines, Sodrel's family business;
- 1 call to Sodrel's official Jeffersonville office;
- 1 call to the Economic Freedom Fund.

See Attachment A.

B. LEGAL ARGUMENT:

1. **Citizens for Truth Made, and Sodrel Accepted, an Illegal In-Kind Contribution**

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The Federal Election Campaign Act limits the amount of money that any person may contribute to Federal candidates. 2 U.S.C. § 441a(a). At this writing, it is illegal for anybody to contribute, and for any candidate to receive, contributions in excess of \$2,300 per election. *Id.* In the 2006 election cycle, the contribution limit was \$2,100 per election. *See* <http://www.fec.gov/press/press2005/20050203limits1.html>.

Federal campaign finance law treats coordinated expenditures by a non-candidate sponsor as in-kind contributions to the candidate with whom they were coordinated. *See* 2 U.S.C. § 441a(a)(7)(B)(i)-(ii); 11 C.F.R. § 109.21(b). Coordination occurs if the candidate requested or suggested the ad; if the candidate was materially involved in decisions about it; if the candidate and the sponsor had substantial discussions in which information material to the ad was conveyed; or if a former candidate employee, consultant, or common vendor used candidate or party information in producing the ad for the sponsor. *See id.* § 109.21(d) (emphasis added).

There is overwhelming evidence that Citizens for Truth's 2006 activities attacking Hill were coordinated with Sodrel. Citizens for Truth is a 527 organization that was formed solely to attack Congressman Hill, Sodrel's opponent. It is exceedingly rare, if not unprecedented, for a 527 organization to be formed solely to attack a single candidate. In the 67 days leading up to the 2006 election, Bernitt, who exercises sole control over this organization, made 71 contacts with Sodrel's official and campaign staff. These contacts were with key players in Sodrel's political operation, including his chief of staff, his son, and his former staff counsel; they were often made from personal rather than governmental lines; and they were made during the very period in which Citizens for Truth was airing radio advertisements and sponsoring billboards attacking Hill. It is entirely implausible that these calls did not involve the exchange of material campaign information between Sodrel's agents and Bernitt.

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Thus, the facts indicate that Citizens for Truth and Sodrel violated 2 U.S.C. § 441a: Citizens for Truth knowingly made, and Sodrel knowingly accepted, prohibited contributions well in excess of the \$2,100 limit that was in place in 2006.

2. EFF May Have Made, and Sodrel May Have Accepted, an Illegal In-Kind Contribution

Phone records produced in discovery also revealed that Bernitt called EFF during the 2006 campaign, when both Bernitt and EFF were mounting a negative campaign against Hill. The fact that Bernitt called EFF during this time period suggests that Bernitt, acting on behalf of the Sodrel campaign, may have shared material information with EFF. The Commission should investigate whether EFF and Sodrel violated 2 U.S.C. § 441a.

3. Citizens for Truth May Have Failed to Register as a Political Committee with the FEC

Any political committee that makes expenditures aggregating in excess of \$1,000 during a calendar year must file a statement of organization with the FEC. 2 U.S.C. §§ 431(4), 433. If Citizens for Truth's activities were coordinated with Sodrel, Citizens for Truth would have made expenditures well in excess of \$1,000 and, thus, would have been required to register as a political committee. It failed to do so.

4. Sodrel and Citizens for Truth May Have Failed to Properly Report Coordinated Communications

Political committees must report all expenditures to the Commission. 2 U.S.C. § 434. Commission regulations require that coordinated communications be reported to the Commission as expenditures. 11 C.F.R. § 109.21(b)(1). Candidates and their authorized committees must report coordinated communications made on their behalf to the FEC as both expenditures and

receipts. 11 C.F.R. § 109.21(b)(3). Political committees that make coordinated communications must report these as both contributions and expenditures. *Id.*

Assuming that Citizens for Truth's activities were coordinated with Sodrel, Sodrel was obligated to report the cost of the expenditure as a receipt and as an expenditure, and Citizens for Truth was required to report the communication as a contribution and an expenditure. Neither party did so.

4. Citizens for Truth May Have Failed to Report Expenditures to the FEC

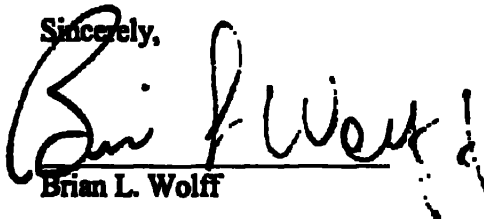
The record presents specific facts to show that Citizens for Truth coordinated with Sodrel during the 2006 campaign. See 11 C.F.R. § 111.4(d)(3). Even if the Commission finds that there was no coordination, however, Citizens for Truth may have failed to properly report its elections activity. Citizens for Truth's 2004 and 2006 ads constitute express advocacy under FECA and should have been reported as independent expenditures. And, even if Citizens for Truth's advertisements do not qualify as independent expenditures, they should have been reported as electioneering communications. Citizens for Truth failed to report any of its 2004 and 2006 activity to the FEC and, thus, violated FECA.

C. REQUESTED ACTION

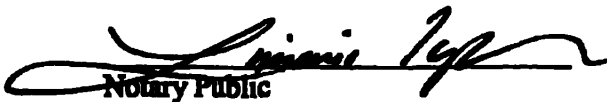
As we have shown, there is clear and substantial evidence that Respondents have violated the Federal Election Campaign Act. Given the strength of the evidence and the seriousness of the offense, Complainant respectfully requests the Commission to immediately investigate these violations.

Should the Commission determine that Respondents have violated FECA, Complainant requests that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.

Sincerely,


Brian L. Wolff

SUBSCRIBED AND SWORN to before me this 27th day of Jan, 2009.


Notary Public

My Commission Expires:

1/14/14

District of Columbia: SS

Subscribed and sworn to before me, in my presence,
this 27th day of Jan, 2009


Notary Public, D.C.

My commission expires 1/14/14

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